

**FIRST COMMUNITY INSURANCE COMPANY
360 CENTRAL AVENUE
ST. PETERSBURG, FL 33701**

NAIC COMPANY 16578

MARKET CONDUCT EXAMINATION REPORT

**As of
December 31, 2002**

**PREPARED BY INDEPENDENT CONTRACTORS
IN COORDINATION WITH
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

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Chief Examiner, Market Conduct Section

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Colorado Division of Insurance

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February 7, 2003

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with Sections 10-1-203, C.R.S. and 10-3-1106, C.R.S., a targeted examination of the First Community Insurance Company's Bail Bond business has been conducted. The Company's records were examined at the office of the Company located at 360 Central Avenue St. Petersburg, FL 33701. The examination covered the calendar year of January 1, 2002 through December 31, 2002.

A report of the examination of the First Community Insurance Company is respectfully submitted.

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**MARKET CONDUCT
EXAMINATION REPORT
OF THE
FIRST COMMUNITY INSURANCE COMPANY**

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COMPANY HISTORY AND PROFILE

First Community Insurance Company (FCIC/Company) was originally incorporated as Soflens Insurance Company on June 7, 1971 under the laws of the State of New York. The name was changed to Bausch & Lomb Insurance Company on January 1, 1980. On January 1, 1993, the present name of First Community Insurance Company was adopted. Effective October 1, 1993, Bankers Insurance Group, Inc. (BIG) of St. Petersburg, Florida acquired all issued and outstanding shares of the Company's stock from Bausch & Lomb, Inc., the owner of the Company since its inception. Prior to the Company's acquisition by BIG, FCIC provided insurance for purchasers of contact lens against damage or loss.

As a member of the BIG holding company, FCIC affiliated insurance companies are: Bankers Insurance Company, Bankers Life Insurance Company, Bankers Security Insurance Company and Bankers Underwriters of Texas, Inc.

FCIC writes business in all 50 states and the District of Columbia. The Company wrote Bail Bonds in the following states: CO, DE, FL, MD, MI, MN, NJ, NM, NY, NC, ND, OH, PA, TX and VA as of December 31, 2001.

The Company was licensed in Colorado on December 9, 1981 as Bausch & Lomb Insurance Company. The Company began writing business in Colorado in 1983. The Company began writing Bail Bonds in Colorado in 1999. Currently FCIC writes Bail Bonds, Flood, Excess Flood and Inland Marine insurance in Colorado.

FCIC states its plan of operation for Colorado consists of contracting and binding individual agents directly with the Company without a managing general agent. There are no territorial controls over the agents. The process of collecting premiums is performed by the agent. The agents collect the premiums from the consumer pursuant to the Bail Bond rate filings with the Colorado Division of Insurance. The agents then remit to FCIC the negotiated percentage of each collected premium. In those instances where FCIC has a general agency agreement with an entity, this agreement is used to indemnify and supervise the operations of a sub-agent.

The examiners were provided a copy of a Service Agreement between FCIC and BIG effective September 1, 1993 wherein BIG will provide certain services and facilities to FCIC as outlined in the agreement. A Bail Surety Administration Addendum, executed January 1, 2000 between FCIC, BIG and Bankers Surety Services, Inc. (BSS), was added to the agreement. This provides that bail surety administration and marketing services are to be performed by BSS. The addendum states in part:

“(a) BSS shall market FCIC's bail surety products to bail agents in the 50 states of the United States, and further shall provide all administration and management services that shall be required to operate FCIC's bail surety program.

(b) BSS shall establish policy and compliance programs within the agencies for the administration of bonds, payment of forfeitures and provision for the security and control of collateral. BIG shall audit agencies for compliance with such programs and for compliance with state laws generally.

(c) BSS shall: Pay to FCIC the sum of 4.65% of all collected net written premium; and
Retain all premiums in excess of 4.65% of collected net written premium from which BSS shall -
Pay all commissions due to agents;
Pay all premium taxes assessed against bail surety premium; and
Pay all costs and expenses of the administration of the program including, but not limited to all salary and benefits, travel and entertainment, printing, dues etc.”

The Company provided a written summary of its antifraud plan, which was filed with its annual report to the Colorado Division of Insurance. The Company has contracted with Insurance Management Solutions Group (IMSG) to provide SIU services to prevent, detect and investigate all forms of external fraud. The Plan does not appear to include provisions to prevent, detect and investigate possible fraud by company employees or agents.

The Company has contracted with IMSG to handle all disaster recovery services. IMSG maintains a secured access and environmentally controlled data processing center as well as nightly offsite backup of all systems.

FCIC’s examination reports from other states were provided to the examiners. Inland Marine and Flood market conduct examinations conducted by Florida in addition to a financial examination conducted by New York were reviewed by the examiners.

FCIC or any independent auditors conducted any periodic internal audits within the last three years.

BSS contractually conducts annual audits of the agents and is responsible for agent education and training. Summaries of Company audits of the agents were submitted to and reviewed by the examiners. It appears that several agents had not accounted for some Powers. The Company has investigated the current status of those Powers and has advised most have been accounted for with efforts continuing to confirm status.

The Company reported 5,628 bail bonds posted and reported in 2001. FCIC advises the gross written premium for Bail Bonds reported in Colorado was \$2,387,542.18, which represents approximately 9 % market share for 2001. The Company’s annual report for the year 2002 has not been filed but the Company advises that there were 3,950 bonds posted and reported in 2002 and that it will report written premium for 2002 as \$2,173,907.30.

PURPOSE AND SCOPE OF EXAMINATION

This targeted market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law, Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and generally accepted operating principles related to Bail Bond insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

The examination was governed by, and was performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report, the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2002 to December 31, 2002.

File sampling was based on a review of underwriting files randomly selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Bail Bond issues and contains information regarding exceptions to the Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Marketing and Sales
3. Complaint Handling
4. Producers/Agents
5. Underwriting: Applications, Forms and Rates
6. Claim Handling, including forfeiture judgments and return of collateral

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

There was a field of 3,950 bonds reported by the company as being posted in the calendar year of 2002 from which fifty (50) were randomly selected. These files were reviewed for compliance with Colorado insurance law. There were three (3) primary agents with nine (9) sub agents for a total of twelve (12) agents subject to examination.

The examination resulted in thirteen (13) issues arising from the Company and its producers' failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado. These issues involved the following categories:

Company Operations and Management:

In the area of company operations and management, four (4) compliance issues are addressed in this report. These issues arise from Colorado insurance law that must be complied with in the writing of bail bond business. The issues in this phase are identified as follows:

- Paying commissions to an unlicensed entity contrary to Colorado insurance law.
- Failure to collect and report premiums as filed with the Division of Insurance.
- Failure to provide adequate procedures to prevent, detect and investigate possible agent and employee fraud.
- Failure to adequately monitor producers' activities.

Marketing and Sales:

In the area of marketing and sales, no compliance issues are addressed in this report:

Complaint Handling:

In the area of complaint handling, one (1) compliance issue is addressed in this report. This issue arises from Colorado insurance law that must be complied with in the writing of bail bond business. The issue in this phase is identified as follows:

- Failure to have a complaint log containing required information.

Producers/Agents:

In the area of Producers/Agents, eight (8) compliance issues are addressed in this report. These issues arise from Colorado insurance law that must be complied with in the writing of bail bond business. The issues in this phase are identified as follows:

- Failure of agent and principal to sign the bond agreement as required by Colorado insurance law.
- Failure of agents to provide a list of collateral to the Company.
- Failure of agents to fulfill fiduciary responsibilities by commingling funds.
- Failure to maintain records for Market Conduct examination.
- Failure to register an assumed (trade) name being used by an agent.
- Failure to have a fraud statement affixed to the applications.
- Failure to collect and report proper premium to the Company.
- Failure of agents to file required annual bail bond report with the Colorado Division of Insurance.

Underwriting:

In the area of underwriting, no compliance issues are addressed in this report.

Claim Handling, including Forfeiture Judgments and Return of Collateral

In the area of claim handling, no compliance issues are addressed in this report.

FIRST COMMUNITY INSURANCE COMPANY

FACTUAL FINDINGS

BAIL BONDS

MARKET CONDUCT EXAMINATION

FACTUAL FINDINGS

COMPANY OPERATIONS/MANAGEMENT

Issue A: Paying commissions to an unlicensed entity contrary to Colorado insurance law.

Section: 10-2-702 – Commissions, states, in part:

(2) **Except for individuals or entities writing bail**, an insurer or insurance producer may pay or assign commissions, service fees brokerages, or other valuable consideration to an insurance agency, **business entity**, or persons **who do not** sell, solicit, or negotiate insurance in this state,.....[Emphasis added.]

Effective September 1, 1993 FCIC and Bankers entered into a contract for Bankers to provide facilities and perform certain administrative and special services for FCIC in its operations. January 1, 2000 this agreement was amended by a “Bail Surety Administration Addendum” to add bail surety administration and marketing to services to be performed under the agreement. The bail surety operations are to be performed by Bankers Surety Services, Inc. (BSS). The Bail Surety Addendum states: “BSS shall pay to FCIC the sum of 4.65% of all collected net written premium; and Retain all premium in excess of the 4.65% of collected net written premium from which BSS shall-Pay all commissions to agents; Pay all premium taxes assessed against bail surety premium; and Pay all costs and expenses of the administration of the program including, but not limited to all salary and benefits, travel and entertainment, printing, dues, etc.” BSS is not licensed in Colorado. Effective January 1, 2002, surety companies and bail bonding agents may not pay or assign commissions, service fees, brokerages, or other valuable consideration as stated in the statute. This arrangement appears to be a violation of Colorado insurance law.

Recommendation # 1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-702, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed all procedures relating to the payment of commissions or other remuneration, and implemented necessary changes to ensure compliance with Colorado insurance law.

Issue B: Failure to collect and report premiums as filed with the Division of Insurance.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states, in part:

(2) Except for bond filing fees charged by a court or law enforcement agency and the actual cost of storing collateral in a secure, self-service public storage facility, no bail bonding agent licensed under this article shall charge for such bail bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or twenty dollars, whichever is more.

(3) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be in writing and shall set forth the schedule of such payments.

The company filed with DOI for a fee of 15% to be used to arrive at the premium for bail bonds provided in Colorado. The agents charged incorrect premiums and reported incorrectly to the Company. The use of any fee other than the filed fee of 15% is a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
3,950	50	23	46%

Recommendation # 2:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104 and 12-7-108, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures relating to premiums charged and reported by agents to ensure compliance with Colorado insurance law.

Issue C: Failure to provide adequate procedures to prevent, detect and investigate possible agent and employee fraud.

Section 10-1-127(6)(a)(I), C.R.S. – Fraudulent insurance acts requires in part:

. . . . Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:

(I) Prevent, detect, and investigate all forms of insurance fraud, *including fraud by the insurance company's employees and agents*, (emphasis added) fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems:

The Company's anti-fraud plan summary was filed with the Division of Insurance as required, but the plan does not appear to outline specific procedures to prevent, detect and investigate fraud by Company employees and producers. This appears to be a violation of Colorado insurance law.

Recommendation # 3:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-127, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to procedures to prevent, detect and investigate possible agent and employee fraud to ensure compliance with Colorado insurance law.

Issue D: Failure to adequately monitor producers' activities.

Section 10-1-127(6)(a)(I), C.R.S., Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, requires, in part:

. . . . Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:

(I) Prevent, detect, and investigate all forms of insurance fraud, including fraud by the insurance company's employees and agents, fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems:

Section 10-2-1005(3), C.R.S., Duties of insurers, provides:

The insurer shall periodically and at least semiannually conduct an on-site review of the underwriting and claims processing operations of the MGA.

FCIC has established procedures to audit its producers' activities at least annually, but has failed to provide adequate monitoring which appears to be a violation of Colorado insurance law as follows:

1. Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states:

(1) A bonding agreement shall be in writing and signed by the bail bonding agent and the principal. If the principal is illiterate or does not read the English language, such bail bonding agent shall note on the agreement that he or she has read or translated the bonding agreement to the principal, and a copy of the translation shall be attached to the agreement.

(3) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be in writing and shall set forth the schedule of such payments.

Ten (10) of the fifty (50) files reviewed either contained a bonding agreement that was not signed by the agent and/or where a payment schedule was indicated the file did not contain a schedule. The Company failed to properly monitor and ensure that the agents were correctly handling bonding agreements and payment schedules.

2. Section 12-7-107, C.R.S., Notice to surety, states:

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefore. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy

thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

Forty-two (42) of the fifty (50) files reviewed indicated that collateral taken to assure bond compliance was not reported to the Company. There were four (4) instances where the copies of bond documents examined in the agent's office did not agree with the original of the same documents in the company's office, in that the agent's copy indicated collateral was taken, but it was not noted on the original. The Company failed to monitor its agents and ensure that the collateral reports were submitted.

3. Section 10-2-704, C.R.S., Fiduciary responsibilities, states:

(3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

Section 12-7-109, C.R.S., Prohibited activities - penalties, states:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such

collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a bail bonding agent or such bail bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section 12-7-103(3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation. The commissioner shall forfeit a qualification bond in the amount necessary to pay any final, nonappealable judgment award for failure to return collateral, including costs and attorney's fees, if awarded.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibilities, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states:

III. Rule

(B) Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

- (1). Upon receipt the insurance producer must treat all premium and return premiums as trust funds and segregate them from his own funds, and
- (2). The insurance producer must keep an accurate record of all fiduciary funds, and
- (3). The insurance producer must not treat insurance premiums or returned premiums as a personal or business asset, and . . .

A review of the bank records of ten (10) of the twelve (12) agents examined indicated that one (1) agent might be commingling funds, as a separate fiduciary trust account is not being maintained. Bank records of two (2) of the agents could not be examined, as the agents could not be contacted. The Company failed to monitor and ensure that agents were not commingling funds.

4. Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states:

III. RULE

RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

Regulation 6-2-2, Response to Division Inquiries, promulgated pursuant to Sections 8-45-117(1)(c), 10-1-109, 10-2-104, 10-3-1110(1), 10-16-109 and 10-1-108(16). C.R.S., states:

Section 4. RULES

- B. Unless a longer time period is specified in the request, every insurance company shall provide a complete response to Market Conduct Examination Comment Forms within five business days from the date of the receipt of the form.

The Company did not adequately maintain its files, as they were not complete as to all required documents involved in the issuance of bail bonds. They did not have most records in house and relied on the agents to maintain complete files.

The Company further failed to monitor its producers to ensure the proper issuance of bail bonds and the subsequent maintenance of related records. Of the twelve (12) agents examined, two (2) failed to respond in a timely manner in providing all of the requested records.

5. Section 10-2-701, C.R.S.-Assumed names-registration, states:

Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.

The trade name being used in their bail bond business was not registered with the Division of Insurance by nine (9) of the twelve (12) agents examined. The Company failed to monitor and ensure that its agents had registered any trade name being used.

6. Section 10-1-127(6)(a)(I)(7)(a), C.R.S.- Fraudulent insurance acts...fraud statement states, in part:

On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following: "It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines denial of insurance, and civil damages. An insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."

The application used in forty-nine (49) of the fifty (50) files reviewed did not contain the required fraud statement. The Company failed to monitor and ensure that applications used by its agents contained a fraud statement.

7. Section 10-3-209(1)(a)(e), C.R.S.- Agent fiduciary responsibilities requires:

All insurance companies writing business in this state, including, without limitation, those defined in section 10-1-102(4), shall pay to the division of insurance a tax on the gross amount of all premiums collected or contracted....

Section 10-2-704(1), C.R.S., Fiduciary responsibility, states, in part:

- (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

Regulation 1-2-1, Agent Fiduciary Responsibility, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states, in part:

III. RULE

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

1. Upon receipt the insurance producer must treat all premiums and return premiums as trust funds and segregate them from his own funds, and
2. the insurance producer must keep an accurate record of all fiduciary funds

In twenty-four (24) of the fifty (50) files reviewed, the agents charged incorrect premiums and reported incorrectly to the Company. The agents' records revealed that various fees other than the Company's filed fee of 15%, ranging from 10% to 22.66%, were being charged. In addition, the Company was recording all premiums as though the filed rate of 15% had been charged. The Company failed to monitor and ensure its agents were charging and reporting the proper premiums, and also recorded premium different from what the agents charged, which resulted in incorrect gross premium on the company books.

8. Section 12-7-105, C.R.S. – Reports and records required – bonding agents - division, requires in part:.....

- (1) Commencing November 1, 2000, each licensed agent shall provide a report to the division no later than November 1, of each year.

DOI Bulletin 14-00 provides for companies to ensure agent compliance with the statute.

The annual report of bail bond transactions, due November 1, 2002, was not filed in a timely manner by four (4) of the twelve (12) agents examined. The Company failed to monitor and ensure that its agents timely file the required annual reports.

Recommendation # 4:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-1-127, 10-2-704, 10-2-701, 10-3-209, 12-7-105, 12-7-107, 12-7-108, 12-7-109, C.R.S. and Regulations 1-1-7, 1-2-1 and 6-2-2. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has implemented procedures and practices related to the monitoring of all of its agents' activities to ensure compliance with Colorado insurance law.

FACTUAL FINDINGS

COMPLAINT HANDLING

Issue E: Failure to have a complaint log that complies with the requirements of Colorado insurance law.

Section 10-3-1104(1)(h)(XVI) C.R.S. states in part:

- (i) This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of those complaints, and the time it took to process each complaint.”

Regulation 6-2-1, Complaint Record Maintenance, promulgated pursuant to Section 10-3-1110, C.R.S., states, in part:

II. PURPOSE

Failure to maintain a record of complaints, as specified therein, is declared to be an unfair trade practice 10-3-1104(1)(i), C.R.S. The purpose of this regulation is to prescribe the minimum information required to be maintained in such a record of complaints and to prescribe a format for such record which may be used by any person subject to this Regulation.

The Company failed to have a complaint log that fully complied with the requirements of this statute and regulation. The log did not contain columns for a reason code, a function code, a disposition of complaint, date complaint closed or the line of business involved. This appears to be a violation of Colorado insurance law.

Recommendation # 5:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104, C.R.S. and Regulation 6-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures to ensure that its complaint log is in full compliance with Colorado insurance law.

FACTUAL FINDINGS

PRODUCERS/AGENTS

Issue F: Failure of agent and principal to sign the bond agreement as required by Colorado insurance law.

Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states, in part:

(1) A bonding agreement shall be in writing and signed by the bail bonding agent and the principal. If the principal is illiterate or does not read the English language, such bail bonding agent shall note on the agreement that he or she has read or translated the bonding agreement to the principal, and a copy of the translation shall be attached to the agreement.

(3) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be in writing and shall set forth the schedule of such payments.

Ten (10) of the fifty (50) files reviewed either contained a bonding agreement that was not signed by the agent and/or where a payment schedule was indicated the file did not contain a schedule. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
3,950	50	10	20%

Recommendation # 6:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-108, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures to ensure both the agent and principal sign the bonding agreements and a payment schedule is completed as required by Colorado insurance law.

Issue G: Failure of agents to provide a list of collateral to the company.

Section 12-7-107, C.R.S., Notice to surety, states:, in part

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefore. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

The Company had contracted with seventeen (17) primary agents and their sub agents from which a sample of the five (5) largest producers and their sub agents were chosen, resulting in twelve (12) bail bonding agents being subject to examination. Two (2) of the twelve (12) agents failed to provide their records in a timely manner. These twelve (12) agents accounted for approximately 56% of the commissions paid during the exam period.

The review of the agents' files and weekly reports revealed the agents are not complying with this statute. Forty-two (42) of the fifty (50) files reviewed indicated evidence of unreported or improperly reported collateral taken by the agents. There were four (4) instances where the copies of bond documents examined in the agent's office did not agree with the original of the same documents in the company's office, in that the agent's copy indicated collateral was taken, but it was not noted on the original. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
3,950	50	46	92%

Recommendation # 7:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-107, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed and implemented all procedures relating to agent reporting collateral taken to ensure compliance with Colorado insurance law.

Issue H: Failure of agents to fulfill fiduciary responsibilities by commingling funds.

Section 10-2-704, C.R.S., Fiduciary responsibilities, states, in part:

(3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

Section 12-7-109, C.R.S., Prohibited activities - penalties, states, in part:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a bail bonding agent or such bail bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section 12-7-103(3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation. The commissioner shall forfeit a qualification bond in the amount necessary to pay any final, nonappealable judgment award for failure to return collateral, including costs and attorney's fees, if awarded.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibilities, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states:

III. Rule

(B) Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

- (1). Upon receipt the insurance producer must treat all premium and return premiums as trust funds and segregate them from his own funds, and
- (2). The insurance producer must keep an accurate record of all fiduciary funds, and
- (3). The insurance producer must not treat insurance premiums or returned premiums as a personal or business asset, and . . .

A review of the bank records of ten (10) of the twelve (12) agents examined, indicated that one (1) agent might be commingling funds, as a separate fiduciary funds trust account is not being maintained. Bank records of two (2) agents could not be examined, as the agents could not be contacted. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
17	10	1	10%

Recommendation # 8:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-2-704 and 12-7-109, C.R.S. and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to the handling of fiduciary funds received by agents to ensure compliance with Colorado insurance law.

Issue I: Failure to maintain records for Market Conduct examination.

Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states:

III. RULE

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

Regulation 6-2-2, Response to Division Inquiries, promulgated pursuant to Sections 8-45-117(1)(c), 10-1-109, 10-2-104, 10-3-1110(1), 10-16-109 and 10-1-108(16). C.R.S., states:

Section 4. RULES

- B. Unless a longer time period is specified in the request, every insurance company shall provide a complete response to Market Conduct Examination Comment Forms within five business days from the date of the receipt of the form.

Two (2) of the twelve (12) agents examined failed to provide all of the requested records in a timely manner. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
17	12	2	17%

Recommendation # 9:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to its agents record retention necessary to ensure compliance with Colorado insurance law.

Issue J: Failure to register assumed (trade) name being used by agent.

Section 10-2-701, C.R.S., Assumed names – registration, states:

Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.

Nine (9) of the twelve (12) agents examined were conducting business under an assumed name, which had not been registered with the insurance commissioner for use in the year 2002. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
17	12	9	75%

Recommendation # 10:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-701, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to its agents registering an assumed name necessary to ensure compliance with Colorado insurance law.

Issue K: Failure to have a fraud statement affixed to all applications.

Section 10-1-127(6)(a)(I)(7)(a), C.R.S.- Fraudulent insurance acts...fraud statement, states, in part:

On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following: "It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines denial of insurance, and civil damages. An insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."

The application used in forty-nine (49) of the fifty (50) files reviewed in the agents' offices did not contain the required fraud statement. The wording in an indemnity agreement being used is not complete or of conspicuous nature. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
3,950	50	49	98%

Recommendation # 11:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-127, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to the provision of a fraud statement on all applications used by its agents to ensure compliance with Colorado insurance law.

Issue L: Failure to collect and report the proper premium to the Company.

Section 10-2-704(1), C.R.S., Fiduciary responsibility, states, in part:

- (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices states, in part:

- (1) The following are defined as unfair or deceptive acts or practices in the business of insurance:
 - (f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract or in any other manner whatever;

Regulation 1-2-1, Concerning Agent Fiduciary Responsibilities, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states:

III. RULE:

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

- 2. the insurance producer must keep an accurate record of all fiduciary funds.

In twenty-three (23) of the fifty (50) files reviewed, the agent charged incorrect premiums and reported incorrectly to the Company. The agents' records displayed a different premium from the premium reported to the Company in some files. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
3,950	50	23	46%

Recommendation # 12:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-2-704 and 10-3-1104, C.R.S. and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to the correct premiums being charged and reported by its agents to ensure compliance with Colorado insurance law.

Issue M: Failure of agents to file annual bond reports with the Division of Insurance.

Section 12-7-105, C.R.S. – Reports and records required – bonding agents - division, requires, in part:

(1) Commencing November 1, 2000, each licensed bail bonding agent shall provide a report to the division no later than November 1 of each year. Such report shall include but is not limited to the following information:

(a) The names of the persons for whom such bail bonding agent has become surety;

(b) A description of any bond activity;

(c) (Deleted by amendment, L. 96, . 1183, 8, effective June 1, 1996.)

(d) The amount of collateral or security received;

(e) (Deleted by amendment, L. 96, p. 1183, 8, effective June 1, 1996.)

(e.5) The names of persons for whom such bail bonding agent has become surety and who have failed to appear;

(f) Such further information as the division may **reasonably require** (emphasis added).

Colorado Division of Insurance Bulletin No.14-00 titled, “Annual reporting requirements for bail bonding agents,” covers in detail the requirements for annual reporting in support of C.R.S. 12-7-105.

Of the twelve (12) agents examined four (4) failed to file the annual report of bail bond transactions, due November 1, 2002, in a timely manner. This appears to be a violation of Colorado insurance law.

Population	Sample Size	Number of Exceptions	Percentage to Sample
17	12	4	33%

Recommendation # 13:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-105, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed , revised and implemented all procedures relating to the ensuring the agents file the required bail bond reports to ensure compliance with Colorado insurance law.

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